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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Remand Proceeding	)	CC Docket No. 90-623
	)	
Application of Open Network	)	CC Docket No. 92-256
Architecture and Nondiscrimination	)	
Safeguards to GTE Corporation	)	

**REPLY COMMENTS OF THE**  
**NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION**

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**REPLY COMMENTS OF THE  
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**SUMMARY**

A large number of the twenty-six parties submitting comments agreed that the current rules allowing the Bell Operating Companies ("BOCs") and GTE to provide discriminatory access to customer proprietary network information ("CPNI") are contrary to the public interest. Under the existing rules, local exchange carriers' ("LECs") unregulated operations are able to access valuable information about their competitors' customers, but the competitors are deprived of reciprocal access to the same information. These rules are patently discriminatory and provide LECs with an unreasonable and unwarranted competitive advantage in marketing unregulated products and services.<sup>1</sup> As a number of parties recognize, under the current CPNI rules, customer premises equipment ("CPE") providers unjustifiably receive even less

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<sup>1</sup> See Comments of CompuServe, Inc.; Comments of Centex Telemanagement, Inc. ("Centex"); Comments of Independent Data Communications Manufacturers Association, Inc. ("IDCMA"); Comments of Prodigy Services Company; Comments of Cox Enterprises; Comments of California Bankers Clearinghouse, New York Clearinghouse Association, and MasterCard; Comments of Information Industry Association ("IIA"); Comments of Tele-Communications Association ("TCA"); Comments of the Newspaper Association of America; Comments of the Public Utility Commission of Texas ("PUCT"); Comments of the National Association of Regulatory Utility Commissioners.

protection than do enhanced service providers ("ESPs"). The fact that a customer must subscribe to a LEC's exchange service does not justify the LEC in discriminating in allowing access to CPNI for unregulated competitive marketing purposes. The CPNI rules should be strengthened to equalize CPNI access, and the strengthened rule should apply to both CPE and enhanced services.

#### ARGUMENT

**I. THE COMMISSION SHOULD INCORPORATE LANGUAGE FROM PENDING LEGISLATION TO REQUIRE LECS TO PROVIDE CPNI TO ALL PROVIDERS OF CPE ON THE SAME TERMS AND CONDITIONS.**

As several of the commenting parties noted, Congress is currently considering legislation requiring that CPNI be made available to BOC-affiliated and non-affiliated suppliers of CPE under the same terms and conditions.<sup>2</sup> H.R. 3626, as approved by the Committee on Energy and Commerce of the U.S. House of Representatives, would add a section to the Communications Act of 1934 addressed specifically to equalizing access to CPNI. The bill would prohibit local telephone companies from using CPNI in the absence of customer approval (1) to provide any service other than carrier communications services; (2) to identify or solicit potential customers for any other service, or (3) to provide CPE. The bill also would require telephone companies to make CPNI available to other entities on the same terms and conditions by which their own personnel obtain access.

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<sup>2</sup> See Comments of PUCT; Comments of the Newspaper Association of America; and Comments of CompuServe.

S. 1822, the Communications Act of 1994, incorporates almost identical standards for nondiscriminatory access to CPNI. Carriers would be prohibited from "discriminat[ing] between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate or compiled information . . . ." <sup>3</sup>

Both the bills pending before Congress afford ESPs and providers of CPE the same nondiscriminatory access to CPNI. Remedying the asymmetry in the treatment of CPE providers and ESPs is clearly among Congress' priorities in passing a telecommunications bill this session. North American Telecommunications Association ("NATA") strongly encourages the Commission to incorporate equivalent language into its rules to prohibit the LECs from discriminating in access to CPNI.

**II. LECs SHOULD NOT BE PERMITTED TO USE THEIR ROLES AS MONOPOLY PROVIDERS OF EXCHANGE SERVICES TO GAIN AN UNWARRANTED ADVANTAGE IN THE MARKET FOR UNREGULATED PRODUCTS AND SERVICES.**

LECs obtain and retain access to CPNI by virtue of their position as providers of bottleneck monopoly local exchange services.<sup>4</sup> A large number of the commenting parties agreed with NATA that the BOCs and GTE should not be permitted to leverage their status as monopoly providers of exchange services to gain an unwarranted advantage in an unregulated competitive market unless

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<sup>3</sup> Sec. 601 of S. 1822.

<sup>4</sup> See Comments of Centex at 6.

equivalent opportunities are made available to unaffiliated competitors.<sup>5</sup>

Several of the commenting parties emphasized that the Commission must strengthen the CPNI rules relating to CPE providers, as well as ESPs.<sup>6</sup> A number of LECs, however, argued that the Commission should not apply CPNI rules to the marketing of CPE because LECs are not dominant in the CPE market.<sup>7</sup> The Commission should reject this argument. The fact that LECs have not yet been able to monopolize the CPE market does not mean that the problems of discrimination and anticompetitive practices have been solved. As long as the LECs remain the dominant suppliers of exchange services, the Commission must be vigilant to prevent them from abusing that position to gain an unwarranted advantage in the CPE market.

A number of parties also agreed with NATA that the strengthened CPNI rules should apply to all LECs, and not just the BOCs and GTE.<sup>8</sup> No party other than the independent LECs disputed this point.

Several of the commenting parties agreed that LECs receive an unwarranted competitive advantage by virtue of their discriminatory

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<sup>5</sup> See, e.g., Comments of Prodigy at 6; Comments of Centex at 3-8; Comments of Cox Enterprises at 6.

<sup>6</sup> See, e.g., Comments of IDCMA at 3-6; Comments of Centex at 5-7; Comments of PUCT at 12.

<sup>7</sup> See Comments of Ameritech at 11; Comments of NYNEX at 10; Comments of Pacific & Nevada Bell at 7.

<sup>8</sup> See, e.g., Comments of California Bankers Clearing House at 2-3; Comments of Centex at 2; Comments of PUCT at 11.

access to CPNI. The Public Utilities Commission of Texas ("PUCT") cited a Motion submitted by Southwestern Bell Telephone Company ("SWBT") indicating that the PUCT rule ending SWBT's discriminatory access to CPNI would cause SWBT to lose 95% of its potential direct-marketing base and force SWBT to expend some \$3 million to make up for its lost advantage.<sup>9</sup>

The PUCT encouraged the Commission to enact a rule similar to the substantive rule enacted by the PUCT.<sup>10</sup> The PUCT rule prohibited discrimination by the LECs in providing access to CPNI. The PUCT rule provided for competitive equity by requiring prior customer authorization before CPNI is released to third parties and requiring that third parties have access to CPNI under the same terms and conditions as LEC personnel and affiliates.<sup>11</sup> LECs were also required to inform any new residential customers inquiring as to supplemental services that similar services could be obtained from a vendor other than the LEC.<sup>12</sup>

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), representing unaffiliated CPE providers, highlighted the fact that CPNI is commercially valuable information

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<sup>9</sup> Comments of PUCT at 7-8.

<sup>10</sup> The CPNI provisions in the PUCT rule were recently found to be preempted by the FCC's regulations. Comments of PUCT at 12-13, citing Southwestern Bell Telephone Company v. Public Utility Commission of Texas, 812 F. Supp. 706, 710 (W.D. Tx. 1993).

<sup>11</sup> Id. at 8.

<sup>12</sup> Id. As adopted by the PUCT, the rule applied only to residential customers, but the PUCT advocates the extension of its policy to all customers.

that can be used to identify when a customer is in the market for CPE and what specific product the customer may need. The LEC-affiliated CPE vendors' access to CPNI provides LECs with an unwarranted advantage over non-affiliated CPE vendors, thereby impairing operation of the competitive market.<sup>13</sup>

The comments of CompuServe, Prodigy, and Centex Telemanagement, Inc. ("Centex") support NATA's contention that the Commission's discriminatory CPNI access rule is an open invitation to engage in "unhooking" and other practices the Commission has already deemed to be unjust and unreasonable. According to Centex, unlimited LEC access to exchange customers' CPNI has caused Centex extensive economic damage. The LECs have utilized CPNI to target Centex's clients for "counter-marketing" efforts and other anti-competitive behavior.<sup>14</sup> According to Centex, the LECs use Centex's request for CPNI as a "trigger" for identifying market opportunities with Centex clients; use CPNI related to Centex clients to tailor specific sales presentations to existing Centex clients; and transfer CPNI from their basic exchange operations to affiliates that compete with Centex in the telemanagement market.<sup>15</sup>

Centex notes that BOC-affiliated CPE vendors have even freer access to CPNI than do affiliated vendors of enhanced services.<sup>16</sup> Thus, the current rules give BOC-affiliated CPE vendors an even

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<sup>13</sup> Comments of IDCMA at 3.

<sup>14</sup> Comments of Centex at 2.

<sup>15</sup> See Comments of Centex at 8-11.

<sup>16</sup> Comments of Centex at 5.



greater unwarranted advantage in marketing CPE. This unwarranted advantage impedes the development of innovative and competitive telecommunications services.<sup>17</sup>

CompuServe, too, provided an extensive description of the advantages maintained by the LECs' use of their unique monopoly position to provide their affiliated marketers of unregulated products and services with special access to competitively sensitive information.<sup>18</sup> According to CompuServe, the LECs can use CPNI to compile a complete list of an affiliated vendor's customers and can focus its marketing efforts on the vendor's customers without having to go through the same marketing efforts and incur the same costs that the independent vendor originally had to expend to market its products and services.<sup>19</sup>

Several commenting parties agreed with NATA that the current CPNI rules also create a substantial cross-subsidy between regulated and unregulated functions within the BOCs and GTE.<sup>20</sup> As NATA noted in its initial comments, the regulated network services operations of the BOCs and GTE currently provide CPNI -- a valuable asset -- to their unregulated CPE operations free of charge, while refusing to provide the same asset to their competitors at any price. In providing discriminatory access to CPNI, the BOCs and

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<sup>17</sup> Comments of Centex at 7.

<sup>18</sup> Comments of CompuServe at 6-7.

<sup>19</sup> Comments of CompuServe at 6-7.

<sup>20</sup> See, e.g., Comments of Prodigy at 5.

GTE are wasting a valuable asset and subsidizing the unregulated operations of the company.

As NATA noted in its initial comments, there is no material difference between discriminatory access to CPNI and other forms of discrimination that the Commission has ruled unlawful. Because CPNI is a product of the BOCs' regulated monopoly functions, the BOCs' and GTE's discrimination and access to CPNI is no different from unlawful discrimination in the provision of any regulated monopoly service. Cox Enterprises emphasized that as long as BOC-affiliated companies retain their preferential access to CPNI, consumers will not receive the full benefits of competition in the market for products and services for which the BOCs face competition.<sup>21</sup>

Several of the LECs claim that their affiliated CPE vendors should be allowed access to CPNI because their customers do not distinguish between regulated and unregulated services, and are unconcerned with the sharing of information between the LECs' monopoly operations and their unregulated, competitive operations.<sup>22</sup> This approach is wrong on several points. First, the claim that the LECs' customers generally welcome solicitations from the LECs' affiliated CPE vendors is highly questionable. Bell Atlantic contends that customers "expect an integrated company to provide products and services on an integrated basis" and strings

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<sup>21</sup> See Comments of Cox Enterprises at 4.

<sup>22</sup> See, e.g., Comments of Bell Atlantic at 2; Supplemental Comments of Bell Atlantic; Comments of NYNEX at 7-8; Comments of US West at 7.

together quotes from consumers and service representatives that supposedly support this contention.<sup>23</sup> Bell Atlantic's claim,<sup>24</sup> however, is rebutted by Tele-Communications Association ("TCA"), which represents telecommunications managers (most of whom represent entities with fewer than twenty lines). According to TCA, users "do not expect telephone companies to make use of CPNI to market unregulated services and products."<sup>25</sup>

In any event, Bell Atlantic's argument demonstrates, at most, that the LEC has some customers who are satisfied with their local exchange services and would be interested in purchasing unregulated products and services from their LEC. These customers can easily arrange to receive targeted marketing information by authorizing their LEC to access their CPNI.

More fundamentally, as CompuServe noted, basic service ratepayers are not LEC "customers" by choice, but are captive customers who have no choice but to purchase exchange services from the LECs.<sup>26</sup> Since the customer has not chosen the LEC in the first place, it is unreasonable to assume that the customer has any more

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<sup>23</sup> Bell Atlantic fails to provide any details as to how these quotes were assembled, how the respondents were selected, or what questions the respondents were answering, which renders the quotes essentially meaningless.

<sup>24</sup> To the extent it is true, Bell Atlantic's claim raises unsettling questions about whether Bell Atlantic is properly explaining to its customers the difference between its regulated monopoly services and its unregulated product offerings.

<sup>25</sup> Comments of TCA at 2.

<sup>26</sup> See Comments of CompuServe at 8-9.

interest in being sold unregulated products and services by the LEC than by any other competing supplier.

An unregulated LEC operation's access to regulated CPNI is therefore fundamentally different from an unregulated company's access to its customer's records. CPNI is accumulated by the LECs in their role as monopoly suppliers of exchange services. Customers have no choice but to enter a CPNI-generating relationship with the LEC. Therefore, the LECs' claims that pre-existing customer relationships justify their providing discriminatory access to CPNI are without merit.

There is no reasonable basis for allowing BOC or GTE CPE marketing personnel access to CPNI information while denying access to the same information to other CPE providers. If the information is deemed sensitive enough from a privacy standpoint that the information must be withheld from independent CPE marketing personnel, then the same considerations would dictate that the information must be withheld from BOC- or GTE-affiliated CPE marketing personnel. CPNI access does not raise significant privacy concerns only when the disclosure is made to parties unaffiliated with the telephone company. As TCA explains, "[t]he degree of sensitivity does not vary depending on whether the information is disclosed to telco marketing personnel or unaffiliated companies."<sup>27</sup>

The PUCT likewise considered it "inappropriate" to allow a LEC to release customer-specific CPNI to persons marketing competitive

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<sup>27</sup> Comments of TCA at 2.

services for the LEC or a LEC affiliate. According to the PUCT, releasing CPNI to such persons violates the customer's reasonable expectation that the personal information gathered by the LEC will only be used by the LEC as necessary to provide traditional telephone service, unless otherwise authorized by the customer.<sup>28</sup>

**III. THE COMMISSION SHOULD REJECT US WEST'S CONTENTION THAT  
LECS HAVE AN ABSOLUTE RIGHT TO USE CPNI IN ANY MANNER THE  
LEC WISHES.**

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US West takes a somewhat different approach from the other LECs. US West contends that, regardless of its degree of monopoly power, it has an absolute right to "use [its] own business information in ways that we deem most appropriate . . . ."<sup>29</sup> In other words, CPNI is US West's property, period.

However, if CPNI is considered the property of US West, US West has gained this property as a regulated utility and monopoly provider of exchange services. Under settled Commission policies, US West is bound to treat its own and its competitor's unregulated affiliates on a nondiscriminatory basis. As discussed above, this same principle must be applied to CPNI. US West's exchange services division is not required to provide CPNI to its CPE marketing division, but once US West releases the information to its own CPE or providers, US West must provide the same information to its competitors on the same terms and conditions. US West cannot use its position as a monopoly supplier of exchange services

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<sup>28</sup> Id. at 9.

<sup>29</sup> Id. at 7.

to gain an unwarranted advantage over its competitors in the CPE market.

### CONCLUSION

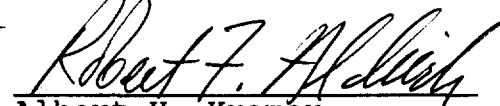
As long as the LECs have captive local exchange customers, there is no reasonable basis for providing their unregulated CPE operations with discriminatory access to CPNI. The Commission is committed to a competitive, unregulated CPE market in which all competitors have equal access to regulated bottleneck services and compete on equal terms.<sup>30</sup> To the extent the BOCs are allowed entry into competitive markets, the Commission's rules and policies are

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<sup>30</sup> See, e.g., Amendment of Section 64.702 of the Commission's Rules, Final Decision, 77 FCC 2d 384, modified on reconsideration, 84 FCC 2d 50 (1980), further modified on reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), aff'd on second further reconsideration, FCC 84-190 (released May 4, 1984).

designed to protect ratepayers from cross-subsidization between regulated and unregulated industries and to protect the BOCs' competitors from discrimination.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", is written over a horizontal line.

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May 19, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of May, 1994, I caused a true copy of the Reply Comments of the North American Telecommunications Association to be served upon the parties listed below.

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